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## OLR Bill Analysis

sHB 5073

### ***AN ACT CONCERNING REVISIONS TO CONNECTICUT'S MODEL ENTITY TRANSACTIONS ACT AND THE CONNECTICUT BUSINESS CORPORATION ACT.***

#### **SUMMARY:**

This bill broadens the list of transactions to which Connecticut's Model Entity Transaction Act (META) (PA 11-241) (see BACKGROUND), do not apply. PA 11-241 is scheduled to take effect on January 1, 2014.

The bill also reinstates exemptions to the Transfer Act that were removed by PA 11-241.

The bill makes changes to the business corporation statutes pertaining to allowable bylaw provisions, indemnification rules, voting group requirements, and appraisal rights. It also makes minor, technical, and conforming changes.

EFFECTIVE DATE: January 1, 2014, except the changes to the corporation statutes are effective October 1, 2012.

#### **§§ 1, 3-6 - MODEL ENTITY TRANSACTIONS ACT**

PA 11-241 prohibits several types of entities from participating in the transactions it governs and specifies that META must not be used to complete a transaction involving any of a number of prohibited entities, including cooperative associations, business corporations, credit unions, public service companies, and cooperatives among others. It also does not apply to conversions, mergers, consolidations, interest exchanges, divisions, or other transactions governed by the act between or among entities of the same type.

The bill broadens the list of transactions exempt from that law to include conversions, mergers, consolidations, interest exchanges,

divisions, or other transactions involving domestic entities organized to render professional services unless the transaction involves another domestic entity organized to render the same professional service, except as the law otherwise permits.

## **§7 – TRANSFER ACT**

The bill reinstates exemptions to the Transfer Act removed by PA 11-241. The Transfer Act regulates conveyances of businesses that handle hazardous waste. The bill reinstates exemptions for:

1. conversions of a general or limited partnership to a limited liability corporation (LLC),
2. transfers of titles from a municipality or bankruptcy court to a nonprofit organization, and
3. acquisition of brownfields that are remediated or undergoing remediation under the Abandoned Brownfield Cleanup (ABC) Program or the Brownfield Remediation and Revitalization Program (see BACKGROUND).

Both of the brownfield programs require the property to be investigated and remediated according to its investigation plan and remediation schedule. Qualifications for the Brownfield Remediation and Revitalization Program also require that:

1. the Department of Energy and Environmental Protection (DEEP) commissioner (a) receives a verification or interim verification letter regarding remediation and (b) issues a no audit letter or successful audit closure letter or
2. 180 days have passed since the verification or interim verification was submitted without the DEEP commissioner issuing an audit decision.

## **§2 – LLC MERGER AND CONSOLIDATION**

Under PA 11-241, an LLC organized to render professional services

may merge or consolidate only with another domestic LLC. The bill specifies that both LLCs in the merger or consolidation must be organized to render the same professional service. The law prohibits the merger or consolidation of an LLC organized to render professional services with any other foreign limited liability company or foreign entity.

## **§§ 8 – 13 – BUSINESS CORPORATIONS**

### ***Allowable Bylaw Provisions (§§ 8-9)***

The law authorizes a corporation's incorporators or board of directors to adopt initial bylaws and the board or shareholders to amend or repeal bylaws. Currently, bylaws may contain any provisions for managing the business and regulating the corporation's affairs that are not inconsistent with law or the certificate of incorporation.

The bill broadens the type of allowable provisions to include any provisions not inconsistent with the law or the certificate of incorporation. The bill also specifies that bylaws may contain a requirement that:

1. if the corporation solicits proxies or consents with respect to an election of directors, the corporation must include in its proxy statement and forms, one or more individuals nominated by a shareholder in addition to individuals nominated by the board of directors, to the extent allowed in the bylaws, or
2. the corporation reimburse the expenses a shareholder incurs from soliciting proxies or consents in connection with an election of directors, to the extent allowed in the bylaws, provided that no bylaw can apply to elections with a record date (the date for determining shareholders' eligibility to vote) prior to the bylaw's adoption.

Current law prohibits the board of directors from amending or repealing a bylaw if, when the shareholders adopted it, they expressly provided that the board could not amend, repeal, or reinstate it.

The bill prohibits shareholders, in amending, repealing, or adopting a bylaw relating to the bill's provisions on directors' elections, from limiting the boards' authority to amend or repeal any condition or procedure in or add any procedure or condition to a bylaw in order to provide for a reasonable, practicable, and orderly process.

***Variation of Indemnification Rules by Corporate Action (§ 10)***

By law, a corporation can obligate itself by its certificate of incorporation, bylaws, resolution, or contract to indemnify directors, officers, employees, and agents or advance them funds to pay for or reimburse lawsuit expenses.

The bill prohibits shareholders or directors from amending the certificate of incorporation or bylaws or passing a resolution that would eliminate the right of indemnification or to advances for expenses for an act or omission that has already taken place. The bill makes an exception if the provision creating the right, and in effect at the time of the act or omission, explicitly authorizes the right's elimination or impairment after such an act or omission has occurred.

***Voting Groups Requirements (§§ 11-12)***

Under current law, if a proposed certificate of incorporation amendment that allows the shareholders of two or more classes or series to vote as separate voting groups would affect those classes or series in the same or a substantially similar way, all the affected shareholders must vote together as a single voting group on the proposed amendment, unless otherwise specified by the certificate of incorporation or required by the board of directors.

The bill extends this voting requirement to all provisions for voting of classes or series as separate groups.

By law, holders of the outstanding shares of a class of stock are entitled to vote as a separate voting group on a proposed amendment to the certificate of incorporation if the amendment would do certain things. The bill eliminates this right to vote as a separate group when the amendment would:

1. create a new class of shares having rights or preferences with respect to dissolution that are prior or superior to the shares of the class or
2. increase the rights, preferences, or number of authorized shares of any class that, after giving effect to the amendment, have rights or preferences with respect to dissolution that are prior or superior to the shares of the class.

***Appraisal Rights (§ 13)***

Currently, a shareholder is entitled to appraisal rights, and to obtain payment of the shares' fair value if the corporation consummates a disposition of assets that leave no significant business activity and the shareholder is entitled to vote on the disposition. The bill specifies that the shareholder will not have appraisal rights in this situation if:

1. under the terms of the corporate action approved by the shareholders, the shareholders will receive the corporation's net assets in cash, in excess of a reasonable amount reserved for legal claims against the dissolved corporation, (a) within one year after the shareholders' approval of the action and (b) according to their respective interests determined at the time of the distribution and
2. the disposition of assets is not an interested transaction (such as a transaction where a director will gain a benefit not available to other shareholders.)

Currently, for this type of corporation action, shares meeting certain criteria that are covered securities, traded in organized markets, or issued by open-end management companies only have appraisal rights if the shareholder must accept something other than cash or shares that meet the same criteria.

The bill instead excludes these shares from having appraisal rights if cash, shares, or proprietary interests are, under the terms of the corporate action approved by the shareholders, to be distributed to the shareholders as part of a distribution of the corporation's net assets in

excess of a reasonable amount reserved for legal claims against the dissolved corporation (1) within one year after the shareholders' approval of the action and (2) according to their respective interests determined at the time of the distribution.

## **BACKGROUND**

### ***Model Entity Transactions Act (META)***

META, effective January 1, 2014, provides the procedures necessary for four kinds of transactions: (1) the merger of one entity with another, (2) the conversion of an entity to another kind of entity, (3) an interest exchange between two entities so that one controls the other without the two merging, and (4) the domestication of an entity originally formed in one state into another state (PA 11-241).

### ***Abandoned Brownfield Cleanup (ABC) Program***

The Abandoned Brownfield Cleanup Program protects developers from liability for investigating and remediating pollution that emanated from a property before they acquired it. The Department of Economic and Community Development (DECD) commissioner determines program eligibility, in consultation with the DEEP commissioner (CGS § 32-91l).

### ***Brownfield Remediation and Revitalization Program***

The DECD's Brownfield Remediation and Revitalization Program protects brownfield owners and their successors from liability to the state and third parties for any contamination that others caused at the property. But this protection does not prevent the DEEP commissioner from requiring remedial action if:

1. the owner provided false information about the property or failed to implement the remediation plan,
2. additional contamination was uncovered at the property after Office of Brownfield Remediation and Development accepted it into the program, or
3. exposure levels increased to a point threatening human health

or the environment (PA 11-141, § 17).

**COMMITTEE**

Banks Committee

Joint Favorable Substitute

Yea 13 Nay 4 (03/15/2012)